

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

**ROY A. CLARKSTON;
MASADA CAPITAL LIMITED, LLC;
VIRGIL G. SMOCK; and
E&V INVESTMENTS, INC.**

Respondents.

**STIPULATION AND CONSENT
ORDER**

Docket no. SD-05-0062
Docket no. SD-05-0063
Docket no. SD-05-0064
Docket no. SD-05-0065

The Utah Division of Securities, (Division), by and through its Director of Enforcement, Michael Hines, and Roy A. Clarkston and Masada Capital Limited, LLC (Respondents) hereby stipulate and agree as follows:

1. Respondents were the subject of an investigation conducted by the Division into allegations that Respondents violated certain provisions of the Utah Uniform Securities Act (Act), Utah Code Ann. § 61-1-1, et seq, as amended.
2. In connection with that investigation, on October 3, 2005, the Division issued an Order to Show Cause to Respondents.

3. Respondents and the Division have agreed to settle this matter by way of this Stipulation and Consent Order.
4. Respondents admit the jurisdiction of the Division over Respondents and over the subject matter of this action.
5. Respondents waive any right to a hearing to challenge the Division's evidence and present evidence on Respondents' behalf.
6. Respondents are represented by attorney Erik Christiansen and are satisfied with the legal representation they have received.
7. Between August 2003 and September 2005, the Division conducted an investigation into this matter that revealed the following:
 - a. Roy A. Clarkston's (Clarkston) address is 2232 Taylor Avenue, Ogden, Utah.
 - b. Masada Capital Limited, LLC (Masada Capital), formerly Masada Mortgage and Business Finance Center, LLC (Masada Mortgage), is a Utah limited liability company. Masada Capital has been registered with the Utah Division of Corporations and Commercial Code as a limited liability company since June 16, 2000, and its corporate status is currently listed as "active". Masada Capital's business address is 2232 Taylor Avenue, Ogden, Utah. Clarkston is the registered agent of Masada Capital, and is one of two members.
 - c. In 2003, Mark Dawood (Dawood), the sole owner of Petra Tech, Inc. (Petra Tech), contacted Clarkston to arrange a loan through Masada Mortgage. According to Dawood, Dawood met with Clarkston because Petra Tech needed

funding and was unable to get a loan through traditional sources.

- d. In June 2003, Dawood met with Clarkston, at Dawood's home in Layton, Utah, to discuss the loan. During that meeting, Clarkston told Dawood about a loan guarantee program (Loan Program) offered by Virgil G. Smock (Smock) and E&V Investments, Inc. (E&V).¹
- e. Clarkston told Dawood that under the Loan Program, E&V had a working relationship with insurance companies that would guarantee Petra Tech's future loan financing, based on Petra Tech's financials, contracts, network security patents, and other possible pending patents. Clarkston told Dawood that according to what he had been told by Smock, Petra Tech's loan would be locked in and guaranteed by E&V through the payment of an advanced fee of 4 to 5.5% of the total amount to be borrowed. Clarkston told Dawood that Clarkston and Masada Mortgage acted as the middle-men between Smock, E&V, and the prospective borrower.
- f. Clarkston told Dawood that Smock had told him that Smock controlled millions of dollars in various banking institutions. When Dawood asked Clarkston how he knew this, Clarkston replied that Smock had shown Clarkston his financial statements.

¹ Smock and E&V were also named in the October 3, 2005 Order to Show Cause issued by the Division to Clarkston and Masada Capital, for their participation in soliciting Dawood's investment.

- g. Clarkston told Dawood that based on the information provided by Smock, he felt good about the loan program.
- h. On June 24, 2003, Dawood received a letter from Clarkston, stating that Masada Mortgage had tentatively arranged for Dawood to deposit an advanced fee of \$5,000, on behalf of Petra Tech, into an escrow account at Premier Title Insurance Agency, and that the \$5,000 would immediately be released to E&V for administrative costs.
- i. On July 8, 2003, Clarkston delivered loan documents for Petra Tech to Dawood at Dawood's home. The documents included an Escrow Account Commitment for Insurance Guarantee Premium and Funding (Letter of Commitment) and a General Fee Agreement.
- j. According to the Letter of Commitment, Petra Tech was to receive a loan in the amount of \$5 million within thirty banking days of Clarkston and Masada Mortgage's receipt of the signed documents. In consideration for the loan, Dawood was to establish an escrow account with Premier Title Insurance Agency on behalf of Petra Tech, in the amount of \$17,750 for administrative costs. Of the \$17,750, upon Dawood's approval, \$5,000 was to be released from Dawood's escrow account to E&V prior to Petra Tech's receipt of the loan funds.
- k. According to the General Fee Agreement, Masada Mortgage would receive a commission of \$31,500 for arranging the loan for Petra Tech.
- l. Dawood told Clarkston that Petra Tech could only afford to put up \$5,250 in

advanced cash. Clarkston told Dawood that he had been informed by Smock that E&V agreed to \$5,250 because E&V would arrange for additional loan fees incurred by Dawood and Petra Tech to be paid from the loan proceeds.

- m. On July 8, 2003, after reviewing the Letter of Commitment and General Fee Agreement, Dawood called Clarkston and told Clarkston he would like to have his attorney review the documents before signing. Clarkston told Dawood that Smock was scheduled to leave the following day to negotiate several loans, and if Dawood and Petra Tech wanted to be included in the current round of funding, E&V needed the documents by the following day.
- n. Dawood agreed to sign the Letter of Commitment and General Fee Agreement, and told Clarkston that he could get the documents and Dawood's personal check for \$5,250 in the morning.
- o. On July 9, 2003, Clarkston picked up the Letter of Commitment, General Fee Agreement and \$5,250 check from Dawood's home. The Letter of Commitment was signed by Dawood on behalf of Petra Tech on July 9, 2003, by Clarkston on behalf of Masada Mortgage on July 10, 2003, and by Smock on behalf of E&V on July 11, 2003. The General Fee Agreement was signed by Dawood on behalf of Petra Tech on July 9, 2003 and Clarkston on behalf of Masada Mortgage on July 10, 2003. Dawood's personal check #1341 was written out to Premier Title Insurance Agency in the amount of \$5,250, and dated July 9, 2003.
- p. When picking up the documents from Dawood, Clarkston told Dawood that

Smock had told him the loan would fund within four to six weeks.

- q. On July 16, 2003, Premier Title Insurance Agency released \$5,000 of the \$5,250 check to Smock by check.
- r. Shortly thereafter, on the advice of a friend, Dawood researched Smock on the Internet and discovered that Smock declared bankruptcy in 1996 and that E&V was no longer registered to do business in Utah.
- s. On August 13, 2003, Dawood met with Clarkston at Clarkston's home in Ogden, Utah. Dawood confronted Clarkston with the information he gathered about Smock, and Clarkston admitted he was aware of Smock's past. Clarkston reassured Dawood that Smock had shown him financial statements showing that Smock owned over \$650 million in assets. Clarkston then told Dawood he believed Dawood and Petra Tech would be funded soon.
- t. At the same meeting, Clarkston asked Dawood to sign several more documents on behalf of Petra Tech, including a Non-Circumvention & Non-Disclosure Agreement, Client Wire Instructions / Pay Order, and a Promissory Note in the amount of \$5 million. Clarkston told Dawood that Smock had informed him that these documents needed to be executed before the loan would go through.
- u. Several months passed without Petra Tech receiving the \$5 million dollar funding, and Dawood received excuse after excuse directly from Clarkston, and from Smock via Clarkston regarding delay.
- v. Dawood and Petra Tech received nothing from their investment in Smock and

E&V's Loan Program. Dawood does not know if Clarkston or Masada Capital received compensation from Smock or E&V for assisting with the loan.

- w. In connection with the offer and sale of a security to Dawood, the Division asserts that Clarkston and Masada Capital directly and/or indirectly, misrepresented to Dawood that for a sizeable advanced fee, Dawood was guaranteed funding in the amount of \$5 million dollars. In fact, Dawood received nothing from his payment of the advanced fee.
- x. In connection with the offer and sale of a security to Dawood, the Division asserts that Clarkston and Masada Capital, directly and/or indirectly, failed to disclose material information, including, but not limited to, the following:
 - i. In 1995, Clarkston pled guilty to money laundering and served 42 months in a Texas federal prison;
 - ii. In 1996 Smock filed bankruptcy, and received a discharge in 2000;
 - iii. In 1997 and 1998, Smock had three non-dischargeable fraud judgments entered against his bankruptcy estate totaling \$666,331;
 - iv. The risk factors associated with the investment;
 - v. Whether anyone related to the investment was licensed in securities; and
 - vi. Whether the investment was registered or exempt from registration.
- z. A search of the Division's records and the records of the National Association of Securities Dealers' Central Registration Depository reveals that Clarkston is not, and has never been, licensed as an investment adviser, investment adviser

representative, broker-dealer or broker-dealer agent in Utah.

9. Based on the Division's investigative findings, the Division concludes that:
 - a. The Loan Program offered and sold by Clarkston and Masada Capital falls within the definition of a security under § 61-1-13(1)(x)(i)(F) (evidence of indebtedness) of the Act, because Clarkston and Masada Capital sold the Letter of Commitment to Dawood for substantial consideration, and Dawood received what appeared to be an enforceable obligation which contemplated the flow of funds; and
 - b. Clarkston and Masada Capital violated the Act by making misrepresentations and omissions of material fact in connection with the offer and sale of a security. The Division also concludes that Clarkston violated the Act by selling a security in Utah without a license.
9. Clarkston and Masada Capital neither admit nor deny the substance of the Division's investigative conclusions. However, to settle this matter, Clarkston and Masada Capital consent to the Division entering an Order:
 - a. Permanently barring Clarkston from obtaining a securities license in Utah;
 - b. Requiring Clarkston and Masada Capital to cease and desist from engaging in any further conduct in violation of the Utah Securities Act;
 - c. Requiring Clarkston and/or Masada Capital to pay Dawood his initial investment of \$5,250, plus 12% interest, for a total of \$5,880, within one month of the date of the accompanying Order; and
 - d. Requiring Clarkston and Masada Capital to pay a fine, jointly and severally, of

\$500 to the Division.

11. Clarkston and Masada Capital acknowledge that this Stipulation and Consent Order, upon approval by the Division Director, shall be the final compromise and settlement of this matter. Clarkston and Masada Capital further acknowledge that if the Division Director does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.
12. Clarkston and Masada Capital acknowledge that the Order does not affect any civil or criminal causes of action that third parties potentially might have against Clarkston and Masada Capital arising in whole or in part from Respondent's actions. As a settlement document, however, this Stipulation is not admissible in any other civil or criminal action that might be filed against Clarkston and/or Masada Capital arising out of the events discussed herein.
13. This Stipulation constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Stipulation in any way.
14. Violation of the Order accompanying this Stipulation constitutes a third degree felony pursuant to § 61-1-21(1) of the Act.
15. Clarkston and Masada Capital have read this Stipulation, understand its contents, and enter into this Stipulation voluntarily. No promises or threats have been made by the Division, nor by any member, officer, agent, or representative of the Division, other than

as contained herein, to induce Clarkston and Masada Capital to enter into this Stipulation.

Utah Division of Securities

Date: Nov 25, 2005

By: [Signature]
Michael Hines
Director of Enforcement

Approved:

[Signature]
Jeff Buckner
Assistant Attorney General

Respondent Clarkston

Date: 2/21/05

By: [Signature]
Roy A. Clarkston

Approved:

[Signature]
Erik Christiansen
Counsel for Respondents Clarkston and
Masada Capital

Respondent Masada Capital

Date: 2/21/05

By: [Signature]
Roy A. Clarkston

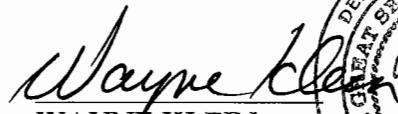
Its: _____

ORDER

Pursuant to the terms of the Stipulation defined above, the Director of the Utah Division of Securities hereby orders that:

1. Roy A. Clarkston is permanently barred from obtaining a securities license in Utah;
2. Roy A. Clarkston and Masada Capital cease and desist from engaging in any further conduct in violation of the Utah Securities Act;
3. Roy A. Clarkston and/or Masada Capital pay Mark Dawood his initial investment of \$5,250, plus 12% interest, for a total of \$5,880, within one month of the date of this Order; and
4. Roy A. Clarkston and Masada Capital pay a fine, jointly and severally, of \$500 to the Division.

DATED this 25th day of November, 2005.



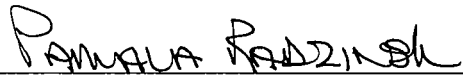
WAYNE KLEIN
Director, Utah Division of Securities



CERTIFICATE OF MAILING

I hereby certify that on the 30th day of November 2005, I mailed,
regular mail, a copy of the foregoing Stipulation and Consent Order to:

Roy A. Clarkston
2232 Taylor Avenue
Ogden, UT 84401



Executive Secretary